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CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

1 Huy Dang H40124
2 P.O. Box 689 – GW236L
3 Soledad, CA 93960-0689
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7 UNITED STATES DISTRICT COURT
8 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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13 Huy Dang
14 Petitioner,

15 v.

16 B. Curry, Warden,
17 Respondent.
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Case No. C07-3845 SBA (PR)

OPPOSITION TO RESPONDENT'S
NOTICE OF MOTION AND
MOTION TO DISMISS

22 Petitioner, Huy Dang, acting in pro per, without counsel, hereby moves this Court to dismiss
23 Respondent's motion to dismiss, as Petitioner did fully exhaust State Court remedies for his claims
24 raised in this Court – essentially that after 15 years the facts of his offense cannot reliably be used to
25 predict future occurrences, due also, in part, to those acts being no more than the minimum necessary to
26 sustain his kidnap robbery conviction.

27 First, Petitioner did not "claim" in his federal writ he was owed relief because his 6th
28 Amendment rights were violated. (See writ, Claim One). The contents of the Memorandum of Points

1 and Authority merely contain legal arguments that in part attach the relevance or reliability of the
2 evidence relied on by the Board to negatively predict Petitioner would again commit crimes and thus be
3 an unreasonable risk of danger to society, if released. As Petitioner noted in his Petition for Review
4 (Resp., Exh. 1, pp. 5-6), assuming such evidence was available, but merely not found to be true by a
5 jury, the State in In re Rosenkrantz (2002) 29 Cal.4th 616, appears to allow its inclusion. Petitioner
6 merely argues against that inclusion. (Writ at p. 17:16-20.) Petitioner also recognizes that no Federal
7 Court has held the Blakley 6th Amendment standards to apply to a parole issue and respectfully submits
8 if this is deemed an unexhausted claim, the writ be amended to exclude its content.

9 Second, Petitioner notes that this issue was raised in the Memorandum of Points and Authority
10 portion of his State Court writs to the Supreme and Appellate Courts, which record Respondent should
11 have provided. Petitioner also notes that on p. 4 of his Petition for Review (Resp. Exh. A) to the State
12 Supreme Court that, "The details of this case are more fully developed in the appellate writ which this
13 Court review[s] as a matter of procedure as defined in the California Rules of Court." Specifically,
14 California Rule of Court 28.2, which notes that a Petition for Review actually requires the Supreme
15 Court to review the Appellate record. Thus the issues before the Court are those questions in the
16 Petition for Review and the claims in the appellate writ. Said notice by Petitioner is all that is required
17 to encompass the Appellate writ claims and issues into the State Supreme Court's review of this case for
18 exhaustion purposes. (Peterson v. Lampert (2003) 319 F.3d 1153, "The federal claim ha[s] been fairly
19 presented...[w]here it was clear 'in context' that the Petition for Review referred to the appellate
20 brief...[and where the] appellate court brief had raised the federal claim[,] as in this case.

21 Finally, Petitioner refers the Court to p. i of his Petition for Review (Resp. Exh. 1), Argument I,
22 which includes the 6th Amendment ("6TH"), which was apparently missed due to a typing error on p. 3
23 of that document.

24 Petitioner, therefore respectfully requests that either Respondent's motion to dismiss be
25 dismissed or Petitioner's writ be amended to exclude his Memorandum of Points and Authorities,
26 supporting argument IV, concerning the 6th Amendment, as that argument is not a claim Petitioner is
27 raising in this Court.
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1 Dated: November 19, 2007

2 Respectfully submitted,

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7 Huy Dang, Petitioner in pro per
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PROOF OF SERVICE BY MAIL

(C.C.P. § 1013A, 2015.5)

I, the undersigned, certify and declare that I am over 18 years of age and I am party to this action, incarcerated at the Correctional Training Facility, Soledad, California and a party to the below entitled case.

On, November 19, 2007, I served a true copy of:

OPPOSITION TO MOTION TO DISMISS

by:

- ☐ Depositing same in the prison mailbox in a sealed envelope, with first class postage attached.
- ☒ Handing same to institutional staff, for processing as Legal Mail per institutional procedures, in a sealed envelope, with an attached Inmate Trust Account Withdrawal form, requesting appropriate postage be attached by the institution's mailroom.
- ☐ Handing same to institution staff, with First Class postage attached, for processing as Legal Mail per institutional procedures. To be deposited in the United States Mail, pursuant to the California Code of Regulations, Title 15, §§ 3142 and 3165.

To be delivered to:

**Office of the Attorney General
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102**

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on November 19, 2007.



Huy Dang, Declarant

FR: DANG, HUY H40134
 P.O BOX 689 GW2362
 Soledad CA 93960-0689

U.S. DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 2111 LEXINGTON AVENUE
 NEW YORK, NY 10029-3078



TO: CLERK OF THE COURT
 U.S. DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 450 GOLDEN GATE AVE
 SAN FRANCISCO CA 94102

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LEGAL MAIL

U.S. DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
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